

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No. 17CV00070

v.

WAL-MART STORES EAST, LP,

Defendant.

DEFENDANT'S PROPOSED SPECIAL VERDICT

Defendant hereby submits the following special verdict questions that Defendant respectfully requests that the court submit to the jurors at the time of deliberations, if any:

SPECIAL VERDICT FORM

1) Has the EEOC proven by a preponderance of the evidence that Marlo Spaeth was a qualified individual with a disability at the time her employment with Walmart was terminated?

Answer Yes or No: _____

(If you answered "Yes," answer Question 2; otherwise, sign and return this verdict form)

2) Did Marlo Spaeth or Amy Jo Stevenson request a reasonable accommodation prior to Walmart's termination of Marlo Spaeth's employment on July 10, 2015?

Answer Yes or No: _____

(If you answered "Yes," answer Question 4; If you answered "No" answer Question 3)

3) Did Marlo Spaeth or Amy Jo Stevenson request a reasonable accommodation during the meeting held on July 16, 2015?

Answer Yes or No: _____

(If you answered "Yes," answer Question 4; If you answered "No" to Questions 2 and 3, sign and return this verdict form)

4) Was Walmart aware prior to September 22, 2015 that Marlo Spaeth's violations of its attendance policy were due to limitations associated with her Down syndrome condition?

Answer Yes or No: _____

(If you answered "Yes," answer Question 5; otherwise, sign and return this verdict form)

5) Has the EEOC proven that the requested accommodation of an indefinite, fixed schedule of 12:00 p.m. to 4:00 p.m. for Marlo Spaeth was connected to her Down syndrome condition?

Answer Yes or No: _____

(If you answered "Yes," answer Question 6; otherwise, sign and return this verdict form)

6) Has the EEOC proven that either Marlo Spaeth or Amy Jo Stevenson provided Walmart with a doctor's note or a statement of a doctor supporting the requested fixed work schedule of 12:00 p.m. to 4:00 p.m., at or around the time an accommodation request was made?

Answer Yes or No: _____

(If you answered "Yes," answer Question 7; otherwise, sign and return this verdict form)

7) Has the EEOC proven by a preponderance of the evidence that Walmart failed to provide Marlo Spaeth with a reasonable accommodation?

Answer Yes or No: _____

(If you answered "Yes," answer Question 8; otherwise, sign and return this verdict form)

8) Has the EEOC proven by a preponderance of the evidence that Walmart intentionally discriminated against Marlo Spaeth because of her disability when it issued her a First Written Coaching on December 22, 2014?

Answer Yes or No: _____

(Proceed to Question 9 no matter how you answered Question 6)

9) Has the EEOC proven by a preponderance of the evidence that Walmart intentionally discriminated against Marlo Spaeth because of her disability by issuing her a Second Written Coaching on March 18, 2015?

Answer Yes or No: _____

(If you answered "Yes" to either Question 8 or Question 9 answer Question 10; otherwise, answer Question 11)

10) Has the EEOC proven that Walmart's issuance of either of the coachings given to Marlo Spaeth were materially adverse employment actions?

Answer Yes or No: _____

(Proceed to Question 11 no matter how you answered Question 10; if you answered "Yes" to Question 10, also answer Question 13)

11) Has the EEOC proven by a preponderance of the evidence that Walmart intentionally discriminated against Marlo Spaeth because of her Down syndrome condition when it terminated her employment on July 10, 2015?

Answer Yes or No: _____

(Proceed to Question 12 no matter how you answered Question 11.)

12) Has the EEOC proven by a preponderance of the evidence that Walmart intentionally discriminated against Marlo Spaeth because of her Down syndrome condition

when it refused to rehire her on September 22, 2015?

Answer Yes or No: _____

(If you answered "Yes" to either Question 10, Question 11 or Question 12, answer Question 13; otherwise, sign and return this verdict form.)

13) Would providing Marlo Spaeth the accommodation of allowing her to work a fixed indefinite schedule of 1:00 p.m. to 4:00 p.m. pose an undue hardship to Walmart's business?

Answer Yes or No: _____

(If you answered "Yes," sign and return this verdict form; otherwise answer Question 14.)

14) Has the EEOC proven by a preponderance of the evidence that Marlo Spaeth suffered compensatory damages which were proximately caused by the conduct for which you have found Walmart liable?

Answer Yes or No: _____

(If you answered "Yes," answer Question 15; if you answered "No," to this question, then answer Question 16.)

15) What amount will fairly compensate Ms. Spaeth for her emotional pain and mental anguish as a result of Walmart's conduct?

Answer: \$ _____

(Answer Question 16.)

16) Has the EEOC proven by a preponderance of evidence that Walmart acted with reckless disregard of Ms. Spaeth's rights under the ADA?

Answer Yes or No: _____

(If you answered "Yes," answer Question 17; otherwise sign and return this verdict form.)

17) Did Walmart act in good faith to attempt to comply with the ADA by implementing policies and procedures to prohibit discrimination in violation of the ADA?

Answer Yes or No: _____

(If you answered "No," answer Question 18; otherwise sign and return this verdict form.)

18) What amount of punitive damages, if any, should be assessed against Walmart?

Answer: \$_____

FOREPERSON

DATE

Dated at Milwaukee, Wisconsin this 11th day of June, 2021.

s/ Emery Harlan
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